UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF:	
Standard Scrap Metal/Chicago International Exporting Site Chicago, Illinois	Docket No. V-W-94-C-249
Respondents: Chicago International Exporting Mr. Steven Cohen Mr. Bud Cohen Mr. Lawrence A. Cohen	ADMINISTRATIVE ORDER PURSUANT TO SECTION 106(a) OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980 AS AMENDED, 42 U.S.C SECTION 9606(a)

OBJECTION OF RESPONDENTS STEVEN COHEN AND LAWRENCE COHEN TO THE SECTION 106 ORDER

I. Introduction and Summary

Steven Cohen and Lawrence Cohen ("Respondents") object to the Section 106 Order, Docket No. V-W-94-C-249 (the "Order") issued on September 14, 1994 and received on September 22, 1994 (copy of which is attached as Exhibit A, hereto). Respondent Steven Cohen asserts that Chicago International Exporting is a defunct entity, and therefore cannot be held liable nor properly form a response or objection.

As the Order is based on inaccuracies and is unfair, Respondents request that it be immediately vacated or substantially amended. The Order is replete with inaccuracies and mistakes, undermining the alleged "imminent endangerment". Further, the Order violates the standards of the U.S. Constitution, namely due process and the prohibition against takings. The Order's schedule is absurd, requiring compliance before receipt. Also, based on the expense

of the remedies requested and the financial condition of Respondent, the Order will irreversible and irrevocably destroy Respondents and their business. This constitutes an unconstitutional taking, and the Order must be vacated or revised to avoid this unfair result.

Respondents reserve the right to supplement, amend and correct this objection as appropriate and based on newly discovered information. Nothing in this objection shall be construed as an admission of consent, liability or acknowledgement of responsibility for removal or remediation costs or expenses.

II. Factual Background

On June 30, 1994, the United States Environmental Protection Agency ("U.S. EPA") issued a Section 104(e) request for information to Chicago International Exporting, a company operated by Steven Cohen in the late 1980's. Steven Cohen retained legal counsel, Joseph S. Wright, Jr., and proceeded to promptly prepare a response to the 32 requests for information. After conferring with U.S. EPA assistant regional counsel, Kurt Lindland, Respondants obtained an extension for filing responses until September 6, 1994 for non-confidential information and until September 24, 1994 for confidential responses.

On August 24, 1994, Respondent Lawrence Cohen received a notification of PRP liability. Lawrence Cohen, believing that the Section 104(e) requests would be answered prior to responding to the August 24, 1994 notification not file a response, pending the filing of the Chicago International Export Responses.

On September 14, 1994, the Order was issued. It was not until September 22, 1994 that Respondents received the Order by regular U.S. mail. The Order contained an impossible

schedule, requiring Respondents to request a meeting with the EPA by September 17, 1994 (a date already past) and requiring the filing of written objections by September 24, 1994 (also impossible as Respondents were in the process of obtaining new counsel). Respondents obtained their new counsel, and after conferring with Kurt Lindland, Respondents were granted until September 30, 1994 to file confidential responses on behalf of Chicago International Exporting and written objections to the Section 106 Order on behalf of Respondents and Chicago International Exporting.

Respondents are in the process of evaluating the Order, its basis and the work required to be performed therein. Respondents have submitted confidential responses to the Section 104(e) Requests on September 30, 1994, providing financial information and identifying parties who may have additional information. A meeting has been scheduled between the U.S. EPA and Respondents for October 5, 1994 and an Agenda will be provided to Kurt Lindland to detail the topics to be discussed in that meeting, namely addressing the Objections described in greater detail below.

III. The Section 106 Order is Arbitrary and Capricious

The standards of the Administrative Procedures Act ("APA"), 5 U.S.C. Sections 500-596, 701-706 govern the orders issued federal agencies, including the EPA's issuance of Section 106 Orders. See Aminoil v. U.S. EPA, 599 F. Supp. 69 (C.D. Cal. 1984) (injunction granted barring 106 Order based on lack of due process and severity of penalties); Barnett M. Lawrence, "Preenforcement Review under CERCLA:: Potentially Responsible Parties Seek an Early Day in Court", 16 ELR 10093, 10098.

The public have both a right to comment on a proposed administrative agency actions and provides the public with an opportunity to challenge issuance of such orders when they are not solidly based in fact. Tex Tin Corp. v. U.S. EPA, 992 F.2d 353 (D.C. Cir. 1992) (impossible for tin slag to migrate in air; site removed from National Priorities List ("NPL")); Bradley Mining Co. v. U.S. EPA, 972 F.2d 1356, 1359 (D.C.Cir. 1992) (deference to EPA rulings is not limitless); Kent County v. U.S. EPA, 963 F.2d 391 (D.C.Cir. 1992) (EPA's decision to rely on single sampling was arbitrary and capricious).; National Gypsum v. U.S. EPA, 968 F.2d 40 (D.C. Cir. 1992) (not relying on scientific evidence was arbitrary and capricious).

A. The Order is Based on Prejudicial Misinformation.

The Section 106 Order is riddled with prejudicial inconsistencies and factual inaccuracies. For example, Page 2 of the Order alone contains ten different inaccuracies. As the U.S. EPA possessed most of the correct facts (See Responses to Section 104(e) Requests, September 6, 1994), the multitude of errors that permeate the Order support a finding of capriciousness and carelessness in the issuance of the Section 106 Order.

1) The Order mistakenly lists one person as two Respondents.

The Order names "Bud" Cohen and "Lawrence" Cohen as if they are two separate persons when in fact these are the same individual. This inability to correctly identify individuals who are quoted later in the order indicates the level of investigation conducted to support the Order. At a minimum, the Order should be amended to correctly identify the individuals as they are known to the U.S. EPA.

2) **The Order names an unrelated and defunct entity, Chicago International Exporting as a liable party.**

Next, the Order mistakenly lists a defunct entity "Chicago International Exporting" as a Respondent. To further complicate matters, the Site is mistakenly defined as the "Standard Scrap Metal/Chicago International Exporting Site".

As clearly stated in the Responses to the Section 104(e) requests, the business entity known as "Chicago International Exporting" never owned, operated out of or leased the property at 4004 S. Wentworth Ave. See also, Paragraph III.14 of the Order (mistakenly identifying Bud Cohen as an owner and operator of Chicago International Exporting).

Chicago International Exporting was a "d/b/a" used by Steven Cohen for a brief period of time. It no longer operates and has no assets. Defunct entities, like dissolved corporations are improper targets for Section 106 Orders, as they are not liable under Section 107, and cannot possibly contribute to remedial or removal efforts. Chicago International Exporting should be removed from the Section 106 Order to prevent confusion and unnecessary investigation.

3) **The Order mistakenly states that an unrelated parcel, 4000 S. Wentworth should be included as part of the Site.**

The Order mistakenly states that the "Standard Scrap Metal/Chicago International Exporting Site" ("SCM/CIE") is located at 4004 S. Wentworth and 4000 S. Wentworth. Respondents do not own, operate on or lease 4000 S. Wentworth, nor do they have any information regarding this address. Again, such mistakes are evidence of lack of corroboration, and subsequent lack of credibility of the findings in the Order. As a whole, these mistakes

support vacatur of the Order or at the minimum, substantial amendment.

4) The Order misdescribes the size and use of 4004 S. Wentworth

Paragraphs III.1, III.2, III.14 and III.16 of the Order misdescribe the size and use of the vacant lot at 4004 S. Wentworth.

Paragraph III.1 inaccurately exaggerates the size of the east lost as "2.5 acres" and the west lot as ".5 acres". In actuality, 4004 S. Wentworth consists of two small parcels, one on each side of South Wells. Both parcels together do not contain 3 acres of land.

The west portion of 4004 S. Wentworth is only large enough to contain a weigh scale and an empty vacant dirt lot. This west parcel is completely surrounded by a tall chain link fence and an industrial building to the south, and the chain link fence is topped with barbed wire. Double gates in the chain link fence remain locked throughout the night and day, and are only opened when deliveries of trucks are brought to the recycling operation currently located across the street and to the south at 4020 S. Wentworth. See also, Paragraph III.14 of the Order (stating that the "east lot" is used to shred motors, when shredding occurs only at 4020 S. Wentworth) and Paragraph III.16 of the Order (mistakenly implying that there are aluminum shredders in the "southern portion of the yard" when no such machines are present on 4004 S. Wentworth).

In addition, the east portion of 4004 S. Wentworth is also significantly less than the 2.5 acres stated in the Order. It is directly adjacent to 4020 S. Wentworth, but 4004 S. Wentworth is also a vacant lot, enclosed on the north, east and west by tall, barbed-wire topped fence and to the south by 4020 S. Wentworth. It does not "contain[] the active shredding and metals separation operation" as stated in the Order. It contains no buildings at all. Indeed, the west

portion of 4004 S. Wentworth is only used for storage of materials before and after recycling on 4020 S. Wentworth.

Thus, it is clear that Paragraphs III.2, III.14 and III.16 of the Order misdescribes the manner in which 4004 S. Wentworth has been and currently is used. They mistakenly state that "the facility is an active 3-acre scrap yard" and "the shredding of electric motors and reclamation of copper are the primary operations at the Site". The Order should be vacated based on these prejudicial and confusing inaccuracies alone. When viewed in connection with the other mistakes in the Order, it is clear the entire Order should be vacated as arbitrary and poorly grounded in fact.

5) <u>The Background and History of SSMC is Misstated.</u>

The Order misdescribes the origin of Standard Scrap Metal Co. In 1946 (not 1928) at 2725 S. State Street (not 4004 S. Wentworth), Benjamin Cohen (Lawrence Cohen's grandfather), Sam Kanter (Lawrence's uncle) and Sam Cohen (Lawrence's father) began a partnership to recycle electric motors. Benjamin Cohen retired in 1951. The partnership operated until the mid-1970's, when Standard Scrap Metal Co. became incorporated. Again, incomplete research taints the conclusions of the Order, and in the interest of fairness, the Order should be vacated to set the record straight.

6) <u>Air pollution permits are irrelevant to CERCLA Liability.</u>

Paragraph III.3 of the Order discusses investigations conducted by the IEPA and U.S. EPA in the early 1970s. However, the Order fails to note that no hazardous substances as

defined by CERCLA were identified in these investigations, nor does the Order describe how these investigations relate to the alleged release or threatened release of any hazardous substance. See Tex Tin Corp. v. EPA, 935 F.2d 1321 (D.C. Cir. 1992) (impossible for tin slag to migrate in air; site removed from NPL). These ten-year old investigations are irrelevant and immaterial to CERCLA liability, and as such are prejudicial to the Respondents. They do not directly support a finding of "immediate" endangerment, and indeed their age casts doubt on the need for urgent action. The Order should be vacated, and further study should be conducted before taking any further action.

7) **IEPA Materials Have Not Been Made Available to Respondents**

Paragraphs III.4, III.5 and III.11 of the Order describe evidence collected by the IEPA in 1984 and reports from an unidentified "employees of a nearby plant" that "workers at the facility periodically dumped transformer oil on the ground and ignited it" reportedly from "1977 to 1981". They also relates that "on one occasion the roof of the Heatbath Corporation caught on fire, and was extinguished by the Chicago Fire Department."

These allegations were not made part of the Administrative Record, and their factual basis has not been made available to Respondents. Respondents deny that these incidents occurred in any fashion, and that transformer oil was not present at the facility at all during the time period alleged, nor was transformer oil ever dumped or lit on fire. The inclusion of outdated and uncorroborated anecdotes as support for its findings further undermines the EPA's finding of "imminent" need for removal of materials from the Site.

8) The Order incorrectly describes the demise of SSMC and CIE

Paragraphs III.6-9 of the Order relate to a TSCA enforcement action brought against SSMC which ultimately caused SSMC's demise. Paragraph 9 of the Order states that "the [TSCA] complaint was dismissed because the U.S.EPA could not prove that the PCBs had been accepted at the Site after 1970". This is correct. However, the Order distorts the remainder of the judicial record. The Order misleadingly states that the "U.S. EPA appealed the dismissal, the decision was reversed, and the $30,000 fine was levied against the facility," implying that the U.S. EPA substantively won its appeal.

This is clear manipulation of fact. In fact, the legal fees expended in order to defend the week-long trial before the Illinois Pollution Control Board brought financial ruin to SSMC, leaving it unable to defend the appeal brought by the U.S.EPA. The U.S. EPA won the appeal by default, and has never proved that PCBs were accepted by the SSMC prior to 1970. This distortion is compounded by later conclusory assertions that PCB contamination has occurred during the 1980's and 1990's, but a careful reading of the Order demonstrates that the U.S. EPA has no basis for asserting this to be true.

With regard to corporate status of SSMC and CIE, Paragraph 9 of the Order incorrectly states that SSMC filed for bankruptcy. In truth, SSMC was dissolved, and its assets were completely distributed to pay its creditors.

Paragraph 10 attempts to complete the corporate chain, holding CIE responsible for SSMC's liabilities. Again, the Order is factually accurate and prejudicially incorrect. Chicago International Exporting simply never operated at 4004 S. Wentworth.

These distortions and inaccuracies fail to support the Order, but instead support the lack

of an imminent need for abatement. The Order has exaggerated and misrepresented the facts as they exist, and should be vacated to set the Record straight.

9) Numerous conclusory "factual" findings in the Order are speculative and inaccurate.

In addition to the inaccurate historical "findings", the Order prejudicially misreports the present operations at 4004 S. Wentworth. These inaccuracies are sufficient to require vacatur of the Section 106 Order. See Tex Tin Corp. v. U.S. EPA, 935 F.2d 1321 (D.C. Cir. 1992) (impossible for tin slag to migrate in air; site removed from NPL); Kent County v. U.S. EPA, 963 F.2d 391 (U.S. EPA) (EPA's decision to rely on single sampling was arbitrary and capricious); National Gypsum v. U.S. EPA, 968 F.2d 40 (D.C. Cir. 1992) (EPA failure to rely on scientific evidence is arbitrary and capricious).

For example, Paragraph 13 of the Order alleges that current reclamation has caused the release of PCBs without any factual support, as follows:

> The current reclamation of electric motors causes PCBs to release when the motors are shredded and reclaimed at the facility. The PCBs are released from the electrical capacitors within the motors which contain pure PCBs. When the motors are shredded in the hammer mill, the PCBs release and soak the copper and metal scrap, in addition to the non-metallic fluff and soil.

These statements are completely unfounded, speculative and objectionable. See also Paragraph 17 of the Order ("the Dioxins and Furans were resultant of burning PCB-containing transformers and capacitors are reported to the IEPA by a nearby plant employee in February 1984"). and Paragraph IV.6.a ("The PCBs can be directly associated with past activities at the Site as reported by a nearby plant employee, and a former railroad employee.").

Respondents deny completely that "current reclamation of electric motors causes PBCs to release". This is precisely the information that the U.S. EPA was unable to establish in the TSCA case discussed above. Even under CERCLA's broad liability scheme, factual, as opposed to legal, causation is not proving by saying so.[1] If the only connection between PCB release sufficient to support a CERCLA claim against Respondent's is the 10-year old testimony of unidentified, undeposed individuals, it is clearly inadequate to support any finding of liability, much less an expensive, intrusive Section 106 removal action.

In a more directly inaccurate manner, Paragraph 14 of the Order relates at length that "burning of wire in barrels was observed in the west lot". The Order fails to relate, as known to the EPA observer, that this burning was an isolated incident caused by person who is not an employee of either the Respondents, Chicago International Exporting or Chicago International Chicago, Inc. which was halted as soon as the Respondents became aware of the occurrence.

The use of distorted, speculative factual findings to support the Order and its finding of imminent need for removal clearly meet the standards of arbitrary and capricious action. Respondent's request that the U.S. EPA promptly correct and vacate the Order, as it is clearly improperly grounded in inaccuracy.

10) Dust Control Devices Have Been Installed at 4020 S. Wentworth

Paragraph III.14 states that "dust from [shredding] is directly vented into the streets and sidewalks of neighboring residences with no dust or pollution control". Again, this statement

[1] Further, the shredding facility currently operated by Chicago International Chicago, Inc. is located at 4020 S. Wentworth, not 4004 S. Wentworth.

is irrelevant and prejudicial for a host of reasons:

-- it is unsupported by any testing performed on dust at the Site or at 4020 S. Wentworth;

-- it does not mention that any such dust could not physically travel to the sidewalks and residences located a good distance away, over fences, under a bypass and through a curve in S. Wells; and

-- it is based on obsolete information, and does not refer to a dust control venting system that has been installed since the February 22, 1994 inspection.

The Order should be amended to correct this inaccuracy alone, as it prejudices and unfairly bias Respondents.

11) Testing may be inaccurate and not sufficient to reach a scientific conclusion

Paragraphs III.13 refers to testing of twelve soil samples on November 4 and 5, 1992 by the IEPA on August 29, 1991. Paragraph III.14 and 17 refer to the taking of ten soil samples by the U.S. EPA. Cases have indicated that the number, as well as the quality of testing, may be grounds for holding that U.S. EPA orders relating to NPL listings should be reversed. See National Gypsum v. EPA, 968 F.2d 40 (D.C. Cir. 1992) (EPA failure to rely on scientific evidence is arbitrary and capricious). It also appears that the location of each sample was not randomly selected and thus the results may be substantially skewed.

Given the severe economic results of a Section 106 order, especially calling for complete removal of allegedly contaminated soil, a more extensive, representative testing regime should be conducted. Respondents are selecting an engineering consultant, and Respondent reserves the right to submit further objections based on the nature of the tests conducted by the U.S. EPA and IEPA.

B. The Order's legal conclusions are not based on fact

The Order itself states that its legal conclusions are based on the Findings of Fact described above and the Administrative Record. As shown above, the Findings of Fact fail to establish any release or threatened release at 4004 S. Wentworth, and are instead filled with speculation, inaccuracy and mistakes. However, the Order should be vacated for legal, as well as factual inadequacy.

1) SCM/CIE Site is not a "facility".

According to the Order, the SCM/CIE Site is a "facility", meaning a place where "hazardous substances have been deposited, stored, disposed of, or placed or otherwise come to be located." 42 U.S.C. Section 9601(9), CERCLA Section 109(a). The Order likewise fails to delineate the particular factual underpinnings of this finding. Given the mistakes in describing the Site's physical location and characteristics, the mistaken identification of the current and prior owners of the corporate entities discussed and named in the Order, and even the failure to describe the deposit of "hazardous waste" with credible scientific evidence, the U.S. EPA has not even established that there is a CERCLA "facility" at 4004 S. Wentworth. See also, U.S. v. Petersen Sand and Gravel, Inc., 806 F. Supp. 1346 (N.D. Ill., 1992)

2) Respondents are not liable as "owners" and "operators" under 107(a)

Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a) sets forth four categories of p parties subject to liability. Neither Steven Cohen, Lawrence Cohen or Chicago International

Chicago, Inc. fail within any one of these categories.

First, neither Steven or Lawrence Cohen were the owner or operator of a facility from which there was a release of hazardous substances. U.S. v. Mirabile, 15 ELR 20092 (E.D. Pa. 1985) (defendants establish defense under Section 107(b)(3) of innocent ownership). As stated above, there is absolutely no credible evidence in the Administrative Record to support that hazardous substances were released during their ownership/operation of 4004 S. Wentworth. The only evidence to support this finding is the 10-year old testimony of two unidentified individuals, completely unsupported by scientific testing or first-hand knowledge of the chemical composition of the substances which reportedly contained PCBs.

In addition, neither of the corporate entities referred to in the Order may be held liable for CERCLA liability. Standard Scrap Metal Co. has been dissolved and all its assets are dispersed. Chicago International Exporting is defunct, and never operated at 4004 S. Wentworth.

Yet further, neither Steven Cohen or Lawrence Cohen were made aware of potential environmental liabilities after conducting due diligence prior to acquiring or leasing the property, they are innocent landowners.

Lastly, the Order fails to contain any factual support that a "contractual relationship" existed between the Respondents and any other person.

Thus, the U.S. EPA has plainly failed to establish that either Steven Cohen, Lawrence Cohen or the defunct Chicago International Exporting are liable, under any of the standards of 107(a). The mere acquisition of a property alone cannot, by itself, create CERCLA liability.. Respondents respectfully request that the Order be vacated, based on the factual inaccuracies contained therein.

Paragraph IV.6 relies heavily on the release of dust into the air, referring to the potential for "migration" of contaminants due to air-borne transmission. Yet no testing was conducted with regard to the composition of any airborne dust, and venting systems have been installed to eliminate any airborne dust. Similarly, no testing was done with regard to water-borne migration, and these statements in Paragraph IV.6 are purely speculative in nature. In short, the evidence supporting liability, damage and particularly the imminent nature of this damage in light of the age of the supporting testimony, all clearly establish that this Order is arbitrary, capricious and not grounded in sufficient fact to withstand review. The Order should be vacated, and further U.S. EPA action should be stayed.

C. <u>The Remedial Action Requested is Unfair and Not Cost Efficient</u>

Respondents object that the Remedial Action requested in the Order is unfair as not grounded in fact as well as probably being the least cost efficient removal scheme.

Part V of the Order sets forth a schedule for compliance with the Order, and lists certain "Work to Be Performed". Respondents are currently in the process of retaining engineering consultants, and will evaluate the necessity for removal and/or treatment as described in Paragraph V.3. Respondents are able to object to the cost of the remedy suggested in the SSI contained in the Administrative Order. Complete removal of all topsoil, plus removal of the concrete pads located on 4004 S. Wentworth are typically the most expensive form of abatement action. Respondents request additional review and study of 4004 S. Wentworth.

Respondents' financial condition will not permit selected remedy. Chicago International Exporting is a defunct entity. In lieu of providing Respondents' personal financial statements,

financial statements of Chicago International Chicago, Inc., Respondent's source of income for the past years have been submitted in Respondents' confidential response to a Section 104(e) request.[2] Based on the inability to finance a substantial removal action, Respondents assert that funds from the Superfund should be used to conduct any major excavation and monitoring efforts. In the alternative, Respondents, the U.S. EPA and all other identifiable PRPs should work together to identify and select the most cost effective remediation and abatement action.

III. Constitutional Objections

The constitutionality of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, and amendments known as the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. Section 9601, et seq. has been established by the Courts. However, the acts of the U.S. EPA are still individually governed by constitutional standards, including those of the Due Process Clause of the Fifth Amendment and its prohibition against takings without just compensation. It is clear that parties to Section 106 Orders are entitled to object to, and obtain judicial review of Section 106 orders that violate these constitutional mandates. See Aminoil v. U.S. EPA, 599 F. Supp. 69 (C.D. Cal. 1984) (injunction granted barring 106 Order based on lack of due process and severity of penalties); Barnett M. Lawrence, "Preenforcement Review under CERCLA:: Potentially Responsible Parties Seek an Early Day in Court", 16 ELR 10093, 10098.

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[2] Respondents point out that the Section 104(e) request was served upon Chicago International Exporting. In light of Chicago International Exporting's defunct statue, Confidential responses were voluntarily provided by Respondents and Chicago International Chicago, Inc.

A. **Respondents were not granted procedural or substantive due process**

Again, the Order plainly violates the standards of due process, in that the schedule it sets is physically impossible to meet:

DEADLINES IMPOSED BY THE SECTION 106 ORDER

Task	Time Allowed	Date Due
Request for meeting	3 days	Sept. 18
Notice of Intent to Comply	3 days	Sept. 18
Notification of Identity of Contractors	5 days	Sept. 19
Designation of Project Coordinator	5 days	Sept. 19
Written objection	7 days	Sept. 21
Preparation of draft Work Plan	10 days	Sept. 24

The Order was issued on September 14, 1994 and mailed to Respondents via regular U.S. Mail. Respondents did not receive the Order until September 22, the day on which they were retaining new legal counsel. Due solely to the U.S. EPA's method of mailing and unreasonable scheduling demands, Respondents were technically in violation of almost every date required in the Order before even receiving notice of its existence. The unfairness is clear. The Order should be vacated and a reasonable schedule as agreed upon between Respondents and the U.S > EPA agreed upon.

B. **Order is a taking without compensation.**

Finally, as noted above, Respondents' financial condition will not support the selected

remedy, which will most likely result in bankruptcy or other dissolution of Respondents' personal and corporate assets. The work ordered by the U.S. EPA constitutes an unconstitutional and fundamentally unfair taking of property without adequate compensation, in violation of the Fifth Amendment against takings.

IV. Conclusion

Respondents object to the Order, based on the ubiquitous factual inaccuracies and the fundamental unfairness of the Order's schedule. The imposition of the Remedy suggested in the Order individuals, innocent owners and providers of a community recycling service, particularly when based on the ten-year old testimony of two uncorroborated "witnesses" is hardly the well-reasoned, well-supported decision that would withstand the "arbitrary" and "capricious" test of the APA.

As stated above, Respondents continue to reserve the right to supplement, amend and correct this Objection as appropriate and based on newly discovered information. Nothing in this Objection shall be construed as an admission of consent, liability or acknowledgement of responsibility for removal or remediation costs or expenses. Nothing in this Objection shall be construed as a waiver of unenumerated defenses, objections or responses, and Respondents reserve the right to assert additional defenses in the future. Respondents assert that they have not failed to consent in good faith to comply with this Order, and that they look forward to

meeting with the U.S. EPA to discuss their financial condition and other avenues for proceeding with additional testing and analysis. Respondents will make every effort in their power to comply with reasoned and fact-based requests, and look forward to assisting the EPA toward a fair, lasting solution.

Respectfully submitted,

THE LAW OFFICES OF CAROLIN K. SHINING

Date: Sept 30, 1994

Attorney for Respondents

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CERTIFICATE OF SERVICE

I, the undersigned, swear that the following was delivered via messenger on September 30, 1994 to the following individuals:

Kurt Lindland
Assistant Regional Counsel
CS-29A
77 West Jackson Boulevard
Chicago, IL 60606

Debbie Regel
Emergency Support Section
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Carolin K. Shining, ,Esq.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO IL 60604-3590

994

REPLY TO THE ATTENTION OF

HSE-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

MR. STEVEN COHEN
C/O CHICAOG INTERNATIONAL EXPORTING
4020 SOUTH WENTWORTH AVENUE
CHICAGO, ILLINOIS 60609

Re:

Dear Sir or Madam:

Enclosed please find a Unilateral Administrative Order issued by the U.S. Environmental Protection Agency ("U.S. EPA") under Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. Section 9601, et seq.

Please note that the Order allows an opportunity for a conference if requested within 3 business days after issuance of the Order, or if no conference is requested, an opportunity to submit comments within 7 business days of issuance of the Order.

If you have any questions regarding the Order, feel free to contact Kurt N. Lindland, Assistant Regional Counsel, at (312) 886-6831 or Steve Faryan, On-Scene Coordinator, at (312) 353-9351.

Sincerely yours,

William E. Muno, Director
Waste Management Division

Enclosure

cc: Gary King, IEPA Superfund Coordinator

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	)	Docket No. V-W-'94-C-249
	)	
Standard Scrap Metal/Chicago International Exporting Site	)	ADMINISTRATIVE ORDER PURSUANT TO SECTION 106(a) OF THE COMPREHENSIVE
Chicago, Illinois	)	ENVIRONMENTAL RESPONSE,
	)	COMPENSATION, AND
Respondents:	)	LIABILITY ACT OF 1980,
Chicago International Exporting	)	AS AMENDED, 42 U.S.C.
	)	SECTION 9606(a)
Mr. Steven Cohen		
Mr. Bud Cohen		
Mr. Lawrence A. Cohen		

I. JURISDICTION AND GENERAL PROVISIONS

This Order is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9606(a), and delegated to the Administrator of the United States Environmental Protection Agency ("U.S. EPA") by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by U.S. EPA Delegation Nos. 14-14-A and 14-14-B, and to the Director, Waste Management Division, Region 5, by Regional Delegation Nos. 14-14-A and 14-14-B.

This Order pertains to property located at 4004 South Wentworth Avenue, and 4000 South Wells Street (the "Standard Scrap Metal/Chicago International Exporting Site" or the "Site"). This Order requires the Respondents to conduct removal activities described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.

U.S. EPA has notified the State of Illinois of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

II. PARTIES BOUND

This Order applies to and is binding upon Respondents and Respondents' heirs, receivers, trustees, successors and assigns. Any change in ownership or corporate status of Respondents including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondents' responsibilities under this Order. Respondents are jointly and severally liable for carrying out all activities required by this

Order. Compliance or noncompliance by one or more Respondents with any provision of this Order shall not excuse or justify noncompliance by any other Respondent.

Respondents shall ensure that their contractors, subcontractors, and representatives comply with this Order. Respondents shall be responsible for any noncompliance.

III. FINDINGS OF FACT

Based on available information, including the Administrative Record in this matter, U.S. EPA hereby finds that:

1. The Standard Scrap Metal/Chicago International Exporting Site ("SCM/CIE") is located at 4004 South Wentworth Avenue, and 4000 South Wells Street, Chicago, Cook County, Illinois, Latitude 87° 37′ 55" north, Longitude 41° 52′ 50" west, in a mixed industrial and residential area. The facility is an active 3-acre scrap yard that reclaims copper and other scrap metal from electric motors. Past and present operations have taken place on two distinct parcels of property separated by Wells Street. The east lot is approximately 2.5 acres, and the west lot is approximately .5 acres. The west lot contains the active shredding and metals separation operations, and the east lot contains a scale for weighing incoming and outgoing trucks.

2. The Standard Metal Company ("SMC") was started in 1928 by Sam Cohen and Sam Kanter at 4004 South Wentworth Avenue. SMC was involved in reclaiming scrap metal, including aluminum and copper. The facility contained one gas-fired boiler, two aluminum sweat furnaces, and a wire burning incinerator. Operations continued until 1972 when the company merged into Standard Scrap Metal Company, Incorporated ("SSMCI"). The company went bankrupt in 1987, changed names to Phoenix Recycling, and continued in the metal reclamation business. The Phoenix Recycling business was owned by the Sam Cohen and Sam and Benjamin Kanter Building Partnership.

3. The SCM/CIE Site has been investigated by IEPA, and U.S. EPA beginning in 1973. In 1973, personnel from IEPA inspected the Site for compliance with air pollution regulations. The inspection revealed that the facility did not have the proper air pollution permits to operate their incinerator or sweat furnaces. A suit (PCB 83-22) was filed against SSMCI for not possessing permits required by IEPA and the City of Chicago. The complaint stated that SSMCI could achieve compliance by installing afterburners on the sweat furnaces. The afterburners were not installed and permits were not applied for until 1984. A permit for the gas-fired boiler was applied for and approved on December 14, 1984.

4. On February 14, 1984, the Illinois Environmental Protection Agency ("IEPA") investigated the Standard Scrap facility, and analytical results indicated levels of polychlorinated biphenyls ("PCBs") up to 1,300 parts per million ("ppm") from the west lot. The IEPA requested that the U.S. EPA conduct a PCB inspection at the Site.

5. On February 14, 1984, IEPA also investigated a report from an employee of a nearby plant that workers at the facility periodically dumped transformer oil on the ground and ignited it. This practice was to have taken place from 1977 to 1981. On one occasion the roof of the Heatbath Corporation caught on fire, and was extinguished by the Chicago Fire Department.

6. On March 30, 1984, U.S. EPA's Toxic Substance Office conducted an inspection of the facility. Analytical results confirmed PCB levels of up to 2,095 ppm, and the facility was fined $25,000 for violating regulations pertaining to the improper disposal of PCBs.

7. On January 10, 1985, the Illinois Pollution Board ("IPB") continued the suit (PCB 83-22) against SSMCI for permit violations. The IPB suit ordered SSMCI to:

> Cease and desist from operations of its incinerator until the necessary operating permit is obtained from the IEPA; cease and desist from operating either of its aluminum sweat furnaces until the necessary permits are obtained from the IEPA, and permanently shut down the inactive aluminum sweat furnace by January 21, 1985.
>
> Install temperature gauges on each afterburner with an interlock that prevents operation unless the afterburner temperature is at least 1400 degrees Fahrenheit, and take all necessary steps to ensure adequate pre-heating of each afterburner prior to charging. These requirements are to be made conditions of the operating permits issued by the IEPA.
>
> Within 90 days of the date of this order pay a penalty of $30,000 for the violation of the Act and Regulations as described in this opinion.

8. On June 18, 1985, the U.S. EPA Technical Assistance Team ("TAT") contractor, collected four soil samples and two wipe samples from the east lot at the Site. The analytical results indicated PCB levels up to 336 ppm in three samples, and isomers of Dioxin were detected in all four samples. The inspection and data were referred to the U.S. EPA Toxic Substance Control Act ("TSCA") program for enforcement purposes.

9. On October 29, 1985, an amended complaint by U.S. EPA was filed against SSMCI facility. The amended complaint levied a $30,000 penalty for violations of Section 16(a) of TSCA. In February, 1987, SSMCI appealed the decision and the complaint was dismissed because U.S. EPA could not prove that the PCBs had been accepted at the Site after 1978; however, U.S. EPA appealed the dismissal, the decision was reversed, and the $30,000 fine was levied against the facility. SSMCI filed for bankruptcy, and the fine was never collected.

10. In 1989 the name was changed again to Chicago International Exporting ("CIE"). The President, Steve Cohen, and Bud Cohen actively manage the metals recycling business. The business is still actively reclaiming copper and other scrap from electric motors.

11. In 1990, a former railroad employee had a telephone interview with Tom Crause of IEPA. The former railroad employee indicated that workers at the Standard Scrap facility cut up and disposed of many electrical transformers during his 30 years of employment with the railroad. Based on the previous sampling indicating PCB contamination and this information, on August 27, 1990, the former SSMCI facility was placed on the Comprehensive Environmental Response, Compensation and Liability Information System ("CERCLIS").

12. On August 29, 1991, IEPA personnel conducted an off-site reconnaissance inspection of the facility. IEPA observed piles of scrap metal around the Site. No air emissions were observed at the Site, and the boiler did not appear to be in operation. At the east lot, the north sweat furnace had been demolished, and was left as a pile of debris. A number of drums, which appeared to be empty, were observed near the north side of the office building. No leakage was observed from the drums and no stressed vegetation was observed on the lot. At the west lot, the gates were open and the lot empty with the exception of three semi-trailers. The IEPA prepared a Preliminary Assessment ("PA") for the Site on September 30, 1991.

13. On September 22, 1992, IEPA was tasked by U.S. EPA Region 5 to conduct a CERCLIS Screening Site Inspection ("SSI") of the Site. The SSI was conducted on November 4 and 5, 1992, and consisted of the collection of twelve soil samples. The analytical results from on-site soil sampling indicated PCBs up to 670,000 parts per billion ("ppb"). The current reclamation of electric motors causes PCBs to release when the motors are shredded and reclaimed at the facility. The PCBs are released from the electrical capacitors within the motors which contain pure PCBs. When the motors are shredded in the hammer mill, the PCBs release and soak the copper and metal scrap, in addition to the non-metallic fluff and soil.

14. On February 22, 1994, U.S. EPA performed a removal Site Assessment ("SA") at the Chicago Industrial Exporting Company facility. The facility and buildings were found to be in the same condition as in the previous inspections. The south boundary of the Site is located adjacent to a residential area within a highly populated area on the south side of Chicago, with residences located within 100 feet of the Site. The Site is bounded by railroad tracks on the east and north, and by the Heatbath Corp. on the west.

During the inspection it was confirmed that the shredding of electric motors and reclamation of copper are the primary operations at the Site. The owners and operators of the CIE business, Mr. Bud Cohen and Mr. Steven Cohen, were contacted by the U.S. EPA On-Scene Coordinator ("OSC") who requested and was given access to the Site. The facility continues to be split into two yards. The east lot is used to shred the electric motors, and separate the copper, scrap and fluff. The shredded metallic material is also separated from the non-metallic material in the east lot. No dust control equipment is connected to the shredding operation, which generates extreme amounts of dust during operations. Mr. Bud Cohen stated that the unit was shut down during the inspection so that the dust would not impact sampling. The metallic material is then hauled into the main processing building where the copper is separated from the steel and other debris with an air-forced cyclone separator. The dust from this operation is directly vented out a window into the streets and sidewalks of neighboring residences with no dust or pollution control. The facility claims that some dust control has been connected to this system. The OSC has referred this air compliance issue to IEPA, to the Cook County Air Board and to the City of Chicago.

Also, during the inspection, CIE workers were observed to burn wood and other debris in the east lot, and burning of wire in barrels was observed at the west lot. Later, CIE workers put out the burning wire with water from a hose. The materials burned in the 55-gallon drum gave off a black smoke that was irritating to the eyes, nose, and throat. A motor had been cut open and oil was observed spilling on to the soil the east lot. The soil, debris, and reclaimed copper and metal were all observed to be coated in oil, and large oil stains were observed in both the east and west lots. An open ended pipe was observed exiting the building from the copper separation system, and a continuous release of dust was observed blowing directly into the neighboring residences.

15. To characterize the hazardous substances reported from earlier investigations, U.S. EPA collected ten soil samples and analyzed them for total metals, Toxicity Characteristic Leaching Procedure ("TCLP") metals, PCBs, volatile compounds and base neutral acids, and Dioxin.

16. The area directly underneath the shredding operations is concrete, but a large part of the yard is not paved. Waste fluff and debris and ash piles are found in the north part of the yard where the wire incinerator and building were demolished. A foundation remains of the demolished building, as does debris from the smoke stack from the incinerator. Two aluminum furnaces remain in the southern portion of the yard.

17. The analytical information has confirmed that the soil and debris found on-site are hazardous by Resource Conservation and Recovery Act ("RCRA") definition. Nine of ten samples collected were above RCRA regulatory levels for lead, and two of the samples were above RCRA regulatory levels for cadmium. This data confirms that hazardous wastes are spread over the entire Site, including soils, fluff piles, and scrap.

    In addition, high PCB levels were detected in nine of the ten samples above the TSCA regulatory levels of 50 ppm. The samples ranged from 61 ppm to 2,000 ppm, confirming the three previous inspections by TSCA, IEPA, and TAT. Total metal values for lead, copper, and zinc were extremely high and above the health risk values, creating a high potential for ingestion and inhalation of airborne dust by neighboring residences, the public entering the Site, and by CIE employees.

    Dioxin and Furans were detected in all four samples, with two samples containing levels above the 1 ppb 2,3,7,8 Total Equivalency Factor risk-based level. The Dioxins and Furans were resultant of burning PCB-containing transformers and capacitors as reported to the IEPA by a nearby plant employee in February 1984. In addition, the burning of wire casings has been documented to create incomplete products of combustion including Dioxin and Furans, which are deposited in the air and into the ash.

IV. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, and the Administrative Record supporting these removal actions, U.S. EPA determines that:

1. The Standard Scrap Metal/Chicago International Exporting Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

2. PCBs, lead, cadmium, and Dioxin are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

3. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

4. Respondents Chicago International Exporting, Mr. Steven Cohen, Mr. Bud Cohen, and Mr. Lawrence A. Cohen are the present "owners" and "operators" of the Standard Scrap Metal/Chicago International Exporting Site, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20). Respondents are therefore liable persons under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

5. The conditions described in the Findings of Fact above constitute an actual or threatened "release" into the "environment" as defined by Sections 101(8) and (22) of CERCLA, 42 U.S.C. §§ 9601(8) and (22).

6. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended ("NCP"), 40 CFR Part 300. These factors include, but are not limited to, the following:

a. actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances, pollutants or contaminants;

this factor is present at the Site due to the existence of high levels of PCB's, lead, cadmium and Dioxin that are present at the surface and subsurface in soils at the Site. The soil is a hazardous waste, as defined by RCRA. Analytical results have confirmed TCLP metals, cadmium at 1.3 milligrams per liter ("mg/l"), and lead at 71 mg/l. The RCRA limits for cadmium and lead are 1.0 and 5.0 mg/l, respectively. Total PCBs were detected in on-site soils ranging from 61 to 2,000 ppm. The TSCA regulatory level for PCB's is 50 ppm. The PCBs can be directly associated with past activities at the Site as reported by a nearby plant employee, and a former railroad employee. The current practice of shredding electric motors causes releases of PCB's from the electrical capacitors inside the motors. The Agency for Toxic Substances and Disease Registry ("ATSDR") considers 1 microgram per kilogram ("ug/kg") (2,3,7,8-TCDD equivalence) of Dioxin in soil to be a level of concern in residential areas. Sample results from on-site soils have confirmed Dioxin levels of 4.004 ug/kg (2,3,7,8-TCDD equivalence). The proximity to residences and the observed releases of dust and smoke from the burning of wire and debris present a direct contact threat to hazardous substances. In addition, the threat of direct contact to hazardous substances to the public dropping off scrap and the CIE workers is evident.

b. high levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate;

this factor is present at the Site due to the existence of high levels of heavy metals that are above RCRA limits for cadmium and lead. High levels of copper, lead and zinc have been identified through sampling, and were observed releasing off-site when the shredding and separation operations are in progress. High levels of PCBs in the soils and in the non-metallic "fluff" have the potential to migrate via airborne dust, and also during the shredding and separation operations. In addition, the soils contain Dioxins found in concentrations greater than health based levels of 1 ug/kg using the 2,3,7,8-TCDD total equivalency factors. The potential for migration of contaminants from the facility exists due to wind blown dust, potential dust emissions from open burning. Rain can also cause run-off of contaminants from the Site onto the street and into the residential neighborhood. In addition, the shredding and separation operations produce a tremendous amount of dust during operations which can migrate off-site. Observed releases of dust to the neighboring residences were documented during the U.S. EPA's site inspection.

c. weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released;

this factor is present at the Site due to the existence of high levels of lead, cadmium, PCB's and Dioxin which can migrate off-site via surface run-off. In addition, the dry and windy weather causes contaminated soils and non-metallic fluff to release to the neighboring residences via dust blown particles. The release of dust was observed by the U.S. EPA during the inspection on February 22, 1994.

d. the unavailability of other appropriate federal or state response mechanisms to respond to the release;

this factor supports the actions required by this Order at the Site. The Site was referred to U.S. EPA by the IEPA and the City of Chicago.

e. other situations or factors that may pose threats to public health or welfare or the environment;

this factor is present at the Site due to the existence of observed releases of contaminated dust from the shredding and separation of electrical motor components, and due to open burning of wire and other materials. These components often contain PCBs and high levels of heavy metals. The facility had no pollution control equipment on the shredding and separation equipment, and at the time of the inspection, was releasing contaminated dust directly to the sidewalk, street, and residences via a duct that lead through the window. Potentially contaminated dust from the shredding and separation operations is continuously being released from the

facility and has a high potential to impact the neighboring residences.

7. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

8. The removal actions required by this Order are necessary to protect the public health, welfare, or the environment, and are not inconsistent with the NCP and CERCLA.

V. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, U.S. EPA hereby orders that Respondents perform the following actions:

1. Notice of Intent to Comply

Respondents shall notify U.S. EPA in writing within 3 business days after the effective date of this Order of Respondents' irrevocable intent to comply with this Order. Failure of each Respondent to provide such notification within this time period shall be a violation of this Order.

2. Designation of Contractor, Project Coordinator, and On-Scene Coordinator

Respondents shall perform the removal actions themselves or retain contractors to implement the removal actions. Respondents shall notify U.S. EPA of Respondents' qualifications or the name and qualifications of such contractors, whichever is applicable, within 5 business days of the effective date of this Order. Respondents shall also notify U.S. EPA of the name and qualifications of any other contractors or subcontractors retained to perform work under this Order at least 5 business days prior to commencement of such work. U.S. EPA retains the right to disapprove of the Respondents or any of the contractors and/or subcontractors retained by the Respondents. If U.S. EPA disapproves a selected contractor, Respondents shall retain a different contractor within 2 business days following U.S. EPA's disapproval and shall notify U.S. EPA of that contractor's name and qualifications within 3 business days of U.S. EPA's disapproval.

Within 5 business days after the effective date of this Order, the Respondents shall designate a Project Coordinator who shall be responsible for administration of all the Respondents' actions required by the Order and submit the designated coordinator's name, address, telephone number, and qualifications to U.S. EPA. To the greatest extent possible, the Project Coordinator shall be present

on site or readily available during site work. U.S. EPA retains the right to disapprove of any Project Coordinator named by the Respondents. If U.S. EPA disapproves a selected Project Coordinator, Respondents shall retain a different Project Coordinator within 3 business days following U.S. EPA's disapproval and shall notify U.S. EPA of that person's name and qualifications within 4 business days of U.S. EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from U.S. EPA relating to this Order shall constitute receipt by all Respondents.

The U.S. EPA has designated Steve Faryan of the Emergency and Enforcement Response Branch, Region 5, as its On-Scene Coordinator ("OSC"). Respondents shall direct all submissions required by this Order to the OSC at 77 West Jackson Boulevard, HSE-5J, Chicago, Illinois, 60604-3590, by certified or express mail. Respondents shall also send a copy of all submissions to Kurt Lindland, Assistant Regional Counsel, 77 West Jackson Boulevard, CS-29A, Chicago, Illinois, 60606. All Respondents are encouraged to make their submissions to U.S. EPA on recycled paper (which includes significant postconsumer waste paper content where possible) and using two-sided copies.

3. Work to Be Performed

Respondents shall perform, at a minimum, the following response activities:

a. Develop and implement a Removal Action Work Plan to address the sampling and disposal of all hazardous wastes or hazardous substances identified at the facility. This Plan shall include an Extent of Contamination Study of the east and west lots, including soil borings beneath the cement pads. In addition, a Sampling Plan and Health and Safety Plan shall be submitted prior to conducting any removal actions. Sampling shall be conducted at neighboring residences to assess if PCBs, lead, cadmium, Dioxin or other hazardous substances are above U.S. EPA residential health standards of 500 ppm for lead, 2 ppm for cadmium in residential gardens, 40 ppm for cadmium in residential yards, 160 ppm for cadmium for the east and west lots to protect against worker exposure, 10 ppm for PCBs, and 1 ppb for 2,3,7,8-TCDD Equivalency Factors.

b. Secure the Site by locking the fence or posting a guard to permit only authorized access to the east and west lots during operating hours.

c. Implement dust control procedures and install equipment to eliminate fugitive dust emissions from the Site. Specifically, eliminate dust and emissions from the electric motor shredding and separation operation, and the copper recovery system inside the main building.

Conduct air monitoring for PCBs, lead, and cadmium using high volume air sampling devices to assess if any fugitive dust emissions are exiting the Site into the neighboring residential yards.

d. Eliminate burning or incineration of material in drums, pits, or other unregulated open containers or areas.

e. Restrict access to contaminated areas by employees, truck drivers, and to the public. Post warning signs indicating contaminated areas, and provide workers with all appropriate information regarding the contaminants found on-site under Sara Title III, the Emergency Planning & Community Right-To-Know Act of 1986 ("EPCRA").

f. Treat and/or dispose of all contaminated soils at a RCRA/TSCA-approved disposal facility. Contaminated soils include all soils with concentrations of PCBs which exceed 10 ppm, and/or concentrations of lead which exceed 5 milligrams per liter (mg/l) TCLP, and/or concentrations of cadmium which exceed 1 mg/l TCLP, and/or concentrations of Dioxin which exceed 1 ppb 2,3,7,8-TCDD total equivalency factor, and/or concentrations of any other hazardous substance found on Site which exceeds the applicable Federal clean-up standards.

g. Remove and dispose of the concrete pads and underlying soils if sampling confirms contamination above clean-up standards as described in Section f. above.

h. Decontaminate and/or dispose of scrap metal contaminated above clean-up standards as described in PCB Spill Clean-up Policy.

i. Conduct confirmation sampling to document that all appropriate U.S. EPA clean-up standards have been met. Due to the proximity to residences and observed releases at the Site, the residential clean-up standards shall apply. The risk based clean-up standards for the Site shall be 500 ppm total lead, 2 ppm total cadmium for residential gardens, 40 ppm total cadmium for residential yards, 160 ppm total cadmium for the east and west lots to protect against worker exposure, 10 ppm PCBs, and 1 ppb 2,3,7,8-TCDD equivalency factor.

Work Plan and Implementation

Within 10 business days after the effective date of this Order, the Respondents shall submit to U.S. EPA for approval a draft Work Plan for performing the removal activities set forth above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the activities required by this Order.

U.S. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan. If U.S. EPA requires revisions, Respondents shall submit a revised draft Work Plan within 7 business days of notification. Within 3 business days after U.S. EPA approval of the Work Plan, Respondents shall begin to implement the Work Plan as finally approved in writing by U.S. EPA in accordance with the schedule approved by U.S. EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Order. Respondents shall notify U.S. EPA at least 48 hours prior to performing any on-site work pursuant to the U.S. EPA approved work plan.

Respondents shall not commence or undertake any removal actions at the Site without prior U.S. EPA approval.

3.2 Health and Safety Plan

Within 10 business days after the effective date of this Order, the Respondents shall submit a plan for U.S. EPA review and comment that ensures the protection of the public health and safety during performance of on-site work under this Order. This plan shall comply with applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 CFR Part 1910. If U.S. EPA determines it is appropriate, the plan shall also include contingency planning. Respondents shall incorporate all changes to the plan recommended by U.S. EPA, and implement the plan during the pendency of the removal action.

3.3 Quality Assurance and Sampling

All sampling and analyses performed pursuant to this Order shall conform to U.S. EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondents shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with U.S. EPA guidance. Upon request by U.S. EPA, Respondents shall have such a laboratory analyze samples submitted by U.S. EPA for quality assurance monitoring. Respondents shall provide to U.S. EPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis. Respondents shall also ensure provision of analytical tracking information consistent with OSWER Directive No. 9240.0-2B, "Extending the Tracking of Analytical Services to PRP-Lead Superfund Sites."

Upon request by U.S. EPA, Respondents shall allow U.S. EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondents or their contractors or agents while performing work under this Order. Respondents shall notify U.S. EPA not less than 3 business days in advance of any

sample collection activity. U.S. EPA shall have the right to take any additional samples that it deems necessary.

3.4 Reporting

Respondents shall submit a monthly written progress report to U.S. EPA concerning activities undertaken pursuant to this Order, beginning 30 calendar days and every 30 calendar Days after the date of U.S. EPA's approval of the Work Plan, until termination of this Order, unless otherwise directed by the OSC. These reports shall describe all significant developments during the preceding period, including the work performed and any problems encountered, analytical data received during the reporting period, and developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

Any Respondent that owns any portion of the Site, and any successor in title shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice of this Order to the transferee and written notice of the proposed conveyance to U.S. EPA and the State. The notice to U.S. EPA and the State shall include the name and address of the transferee. The party conveying such an interest shall require that the transferee will provide access as described in Section V.4 (Access to Property and Information).

3.5 Final Report

Within 60 calendar days after completion of all removal actions required under this Order, the Respondents shall submit for U.S. EPA review a final report summarizing the actions taken to comply with this Order. The final report shall conform to the requirements set forth in Section 300.165 of the NCP. The final report shall also include a good faith estimate of total costs incurred in complying with the Order, a listing of quantities and types of materials removed, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destinations of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits).

The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

> Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

4. Access to Property and Information

Respondents shall provide or obtain access as necessary to the Site and all appropriate off-site areas, and shall provide access to all records and documentation related to the conditions at the Site and the activities conducted pursuant to this Order. Such access shall be provided to U.S. EPA employees, contractors, agents, consultants, designees, representatives, and State of Illinois representatives. These individuals shall be permitted to move freely at the Site and appropriate off-site areas in order to conduct activities which U.S. EPA determines to be necessary. Respondents shall submit to U.S. EPA, upon request, the results of all sampling or tests and all other data generated by Respondents or their contractors, or on the Respondents' behalf during implementation of this Order.

Where work under this Order is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall obtain all necessary access agreements within 14 calendar days after the effective date of this Order, or as otherwise specified in writing by the OSC. Respondents shall immediately notify U.S. EPA if, after using their best efforts, they are unable to obtain such agreements. Respondents shall describe in writing their efforts to obtain access. U.S. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the response activities described herein, using such means as U.S. EPA deems appropriate.

5. Record Retention, Documentation, Availability of Information

Respondents shall preserve all documents and information relating to work performed under this Order, or relating to the hazardous substances found on or released from the Site, for six years following completion of the removal actions required by this Order. At the end of this six year period and at least 60 days before any document or information is destroyed, Respondents shall notify U.S. EPA that such documents and information are available to U.S. EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to U.S. EPA. In addition, Respondents shall provide documents and information retained under this Section at any time before expiration of the six year period at the written request of U.S. EPA.

6. Off-Site Shipments

All hazardous substances, pollutants or contaminants removed off-site pursuant to this Order for treatment, storage or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by U.S. EPA, with the U.S. EPA Revised Off-Site Rule, 40 CFR § 300.440, 58 Federal Register 49215 (Sept. 22, 1993).

7. Compliance With Other Laws

All actions required pursuant to this Order shall be performed in accordance with all applicable local, state, and federal laws and regulations except as provided in CERCLA Section 121(e) and 40 CFR Section 300.415(i). In accordance with 40 CFR Section 300.415(i), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by U.S. EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements under federal environmental or state environmental or facility siting laws.

8. Emergency Response and Notification of Releases

If any incident, or change in Site conditions, during the activities conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, the Respondents shall immediately take all appropriate action to prevent, abate or minimize such release, or endangerment caused or threatened by the release. Respondents shall also immediately notify the OSC or, in the event of his/her unavailability, shall notify the Regional Duty Officer, Emergency and Enforcement Response Branch, Region 5 at (312) 353-2318, of the incident or Site conditions.

Respondents shall submit a written report to U.S. EPA within 7 business days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. Respondents shall also comply with any other notification requirements, including those in CERCLA Section 103, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 11004.

VI. AUTHORITY OF THE U.S. EPA ON-SCENE COORDINATOR

The OSC shall be responsible for overseeing the implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any work required by this Order, or to direct any other response action

undertaken by U.S. EPA or Respondents at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

U.S. EPA and Respondents shall have the right to change their designated OSC or Project Coordinator. U.S. EPA shall notify the Respondents, and Respondents shall notify U.S. EPA, as early as possible before such a change is made, but in no case less than 24

hours before such a change. Notification may initially be made orally, but shall be followed promptly by written notice.

VII. PENALTIES FOR NONCOMPLIANCE

Violation of any provision of this Order may subject Respondents to civil penalties of up to $25,000 per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1). Respondents may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondents violate this Order or any portion hereof, U.S. EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

VIII. REIMBURSEMENT OF COSTS

Respondents shall reimburse U.S. EPA, upon written demand, for all response costs incurred by the United States in overseeing Respondents' implementation of the requirements of this Order. U.S. EPA may submit to Respondents on a periodic basis a bill for all response costs incurred by the United States with respect to this Order. U.S. EPA's Itemized Cost Summary, or such other summary as certified by U.S. EPA, shall serve as the basis for payment.

Respondents shall, within 30 days of receipt of the bill, remit a cashier's or certified check for the amount of those costs made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency
Superfund Accounting
P.O. Box 70753
Chicago, Illinois 60673

Respondents shall simultaneously transmit a copy of the check to the Director, Waste Management Division, U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604-3590. Payments shall be designated as "Response Costs - Standard Scrap Metal/Chicago International Exporting Site" and shall reference the payors' name and address, the U.S. EPA site identification number (WX), and the docket number of this Order.

Interest at a rate established by the Department of the Treasury pursuant to 31 U.S.C. § 3717 and 4 CFR § 102.13 shall begin to accrue on the unpaid balance from the day after the expiration of the 30 day period notwithstanding any dispute or an objection to any portion of the costs.

IX. RESERVATION OF RIGHTS

Nothing herein shall limit the power and authority of U.S. EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent U.S. EPA from seeking legal or equitable relief to enforce the terms of this Order. U.S. EPA also reserves the right to take any other legal or equitable action as it deems appropriate and necessary, or to require the Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

X. OTHER CLAIMS

By issuance of this Order, the United States and U.S. EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or U.S. EPA shall not be a party or be held out as a party to any contract entered into by the Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out activities pursuant to this Order.

This Order does not constitute a pre-authorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

Nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against the Respondents or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106(a) or 107(a) of CERCLA, 42 U.S.C. §§ 9606(a), 9607(a).

XI. MODIFICATIONS

Modifications to any plan or schedule may be made in writing by the OSC or at the OSC's oral direction. If the OSC makes an oral modification, it will be memorialized in writing within 7 business days; however, the effective date of the modification shall be the date of the OSC's oral direction. The rest of the Order, or any other portion of the Order, may only be modified in writing by signature of the Director, Waste Management Division, Region 5.

If Respondents seek permission to deviate from any approved plan or schedule, Respondents' Project Coordinator shall submit a written request to U.S. EPA for approval outlining the proposed modification and its basis.

No informal advice, guidance, suggestion, or comment by U.S. EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondents shall relieve Respondents of their obligations to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

XII. NOTICE OF COMPLETION

After submission of the Final Report, Respondents may request that U.S. EPA provide a Notice of Completion of the work required by this Order. If U.S. EPA determines, after U.S. EPA's review of the Final Report, that all work has been fully performed in accordance with this Order, except for certain continuing obligations required by this Order (e.g., record retention), U.S. EPA will provide notice to the Respondents. If U.S. EPA determines that any removal activities have not been completed in accordance with this Order, U.S. EPA will notify the Respondents, provide a list of the deficiencies, and require that Respondents modify the Work Plan to correct such deficiencies. The Respondents shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the U.S. EPA notice. Failure to implement the approved modified Work Plan shall be a violation of this Order.

XIII. ACCESS TO ADMINISTRATIVE RECORD

The Administrative Record supporting these removal actions is available for review during normal business hours in the U.S. EPA Record Center, Region 5, 77 W. Jackson Boulevard, Seventh Floor, Chicago, Illinois. Respondents may contact Kurt Lindland, Assistant Regional Counsel, at (312) 886-6831 to arrange to review the Administrative Record. An index of the Administrative Record is attached to this Order.

XIV. OPPORTUNITY TO CONFER

Within 3 business days after issuance of this Order, Respondents may request a conference with U.S. EPA. Any such conference shall be held within 5 business days from the date of the request, unless extended by agreement of the parties. At any conference held pursuant to the request, Respondents may appear in person or be represented by an attorney or other representative.

If a conference is held, Respondents may present any information, arguments or comments regarding this Order. Regardless of whether a conference is held, Respondents may submit any information, arguments or comments in writing to U.S. EPA within 2 business days following the conference, or within 7 business days of issuance of the Order if no conference is requested. This conference is not an

evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondents a right to seek review of this Order. Requests for a conference shall be directed to Kurt Lindland, Assistant Regional Counsel, at (312) 886-6831. Written submittals shall be directed as specified in Section V.2 of this Order.

XV. SEVERABILITY

If a court issues an order that invalidates any provision of this Order or finds that Respondents have sufficient cause not to comply with one or more provisions of this Order, Respondents shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

XVI. EFFECTIVE DATE

This Order shall be effective 10 business days following issuance unless a conference is requested as provided herein. If a conference is requested, this Order shall be effective 5 business days after the day of the conference.

IT IS SO ORDERED

BY: _____ DATE: 9/14/94

William E. Muno, Director
Waste Management Division
United States
Environmental Protection Agency
Region 5

ATTACHMENT A

U.S. ENVIRONMENTAL PROTECTION AGENCY
REMOVAL ACTION

ADMINISTRATIVE RECORD
FOR
STANDARD SCRAP/CHIAGO INTERNATIONAL EXPORTING
CHICAGO, ILLINOIS

September 2, 1994

DATE	AUTHOR	RECIPIENT	TITLE/DESCRIPTION	PAGES
07/27/93	Faryan, S., U.S. EPA	King, G., IEPA	Letter Requesting U.S. EPA Removal	2
05/06/94	Ecology & Environment, Inc.	U.S. EPA	Site Assessment Removal Action Plan	127
09/25/94	Faryan, S., U.S. EPA	Estep, L., IEPA	Letter Requesting ARARs	2
00/00/00	Faryan, S., U.S. EPA	Adamkus, V., U.S. EPA	Action Memorandum (Pending)	

ATTACHMENT B

LIABILITY FILE INDEX

	DOCUMENT TYPE	DATE	AUTHOR
1.	Site Assessment Report	5/6/94	Ecology & Environment
2.	Dunn & Brad Street Report	5/20/94	Dunn & Brad Street
3.	Information Request	6/30/94	U.S. EPA
4.	Letter	7/13/94	U.S. EPA
5.	Telephone Log	7/19/94	U.S. EPA
6.	Information Request	7/28/94	U.S. EPA
7.	Information Request Response	8/10/94	LaSalle Banks
8.	Information Request Response	8/17/94	Cole Taylor Bank
9.	Information Request Follow-up	8/18/94	U.S. EPA
10.	Information Request	8/24/94	U.S. EPA

STANDARD SCRAP METAL/CHICAGO INTERNATIONAL EXPORTING SITE
LIST OF PRPs RECEIVING UNILATERAL ADMINISTRATIVE ORDER

Chicago International Exporting
4020 South Wentworth Avenue
Chicago, Illinois 60609

Mr. Steven Cohen
c/o Chicago International Exporting
4020 South Wentworth Avenue
Chicago, Illinois 60609

Mr. Bud Cohen
c/o Chicago International Exporting
4020 South Wentworth Avenue
Chicago, Illinois 60609

Mr. Lawrence A. Cohen
318 North Branch
Glenview, Illinois 60025-5131